BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

In the Matter of	)	
	)	
Implementation of Section 10 of the Cable Consumer Protection and Competition Act of 1992	)	MM Docket No. 92-258
	)	
Indecent Programming and Other Types of Materials on Cable Access Channels	)	

To: The Commission

COMMENTS OF NATIONWIDE COMMUNICATIONS INC.

Nationwide Communications Inc. ("NCI"), by its attorneys, hereby files it comments in response to the Notice of Proposed Rule Making, released November 10, 1992, in the above-captioned proceeding (the "Notice").

NCI is the owner and operator of the second largest private cable system in the United States. This private cable system serves nearly 80,000 multiple unit dwellings in Houston, Texas, via a hybrid of master antenna television systems, satellite master antenna television systems, and community antenna television systems. Service to most of these dwellings is provided pursuant to a non-exclusive franchise granted by the City of Houston.

Pursuant to its franchise agreement, two of the channels on NCI's system are designated as "educational access channels", and are reserved for use by the City of Houston's educational authorities. In addition, two channels are designated as "public access channels." One of the public access channels is reserved for use by city authorities and is, in essence, a "governmental

access channel". The other public access channel is reserved for use by the public on a non-discriminatory, first-come, first-served basis. Authority to program this channel has been delegated by the City of Houston to Access Houston, Inc., an independent non-profit corporation. Comencing in 1993, all programming on the public access channel will be delivered from Access Houston Inc. directly into NCI's system, and will be simultaneously distributed directly to NCI's subscribers without delay or review by NCI.

In paragraph 13 of the Notice, the Commission notes that Section 10 of the Cable Television Consumer Protection and Competition Act of 1992 (the "1992 Cable Act") requires the Commission to enact regulations under which cable operators will be allowed to prohibit the use of any public, educational or governmental facilities ("PEG channels") for programming containing obscene material, sexually explicit conduct, or material soliciting or promoting unlawful conduct." The Notice also points out that the 1992 Cable Act amends Section 638 of the Communications Act so that cable operators are no longer statutorily immune from the carriage of obscene materials on these channels.

While NCI recognizes and supports the important role played by PEG channels in providing a forum for public contribution to the "marketplace of ideas," NCI is opposed to the use of such channels for the cablecast of obscene or indecent programming, or programming soliciting illegal conduct.[1] It is the present intention of NCI to prohibit the use of its PEG channels for such programming. However, NCI is deeply concerned that it may now be subject to liability for obscene programming presented on PEG

[1] Indeed, NCI's franchise agreement prohibits the cablecast of obscene or indecent programming.

channels without its knowledge or approval, and without an effective means to enforce the proposed prohibitions. Accordingly, NCI suggests that the proposed regulations include the provisions described below.

First, as proposed in the Notice (para. 14), operators must be allowed to require certifications that material presented for cablecast on PEG channels does not fit into the categories barred by Section 10 of the 1992 Cable Act. Because Section 611(d) of the Communications Act generally restricts cable operators from regulating the content of PEG channels,[2] there are operators who are not in a position to review PEG programming prior to its cablecast, and those operators must therefore be allowed to obtain such certifications in order to promote compliance with the requirements of Section 10 of the 1992 Cable Act. It is also important that operators be allowed to obtain certifications from the party providing programming directly to the cable operator: the producer of the programming if the cable operator operates the public access facilities, or the entity that actually programs the public access channel,[3] if the cable operator does not operate the public access facilities.

Second, the Commission's rules should state explicitly that operators are protected from liability under federal, state or local obscenity laws for programming provided over PEG channels for which the operator received a certification of compliance prior to cablecast of such programming. Without such a bar from liability,

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[2] Section 611 is subject to Section 624(d)(1), which allows operators, subject to a provision in a franchise agreement, to prohibit the cablecast of obscene programming.

[3] E.g., Independent institutions established under local laws or franchise agreements to supervise the choice and provision of public access programming to the operator.

certifications are of little value to operators. Furthermore, the existence of a bar from liability based on certifications will limit the amount that operators, in order to protect themselves from liability, will have to intrude into the programming decisions made by public access programmers. This is more consistent with Congress' original goals in establishing PEG channels.

In order to allow operators to protect themselves from liability and effectuate the programming prohibitions provided in Section 10, the rules should allow operators to demand certifications a reasonable time in advance of cablecast of programming.[4] Accordingly, if a PEG programmer refuses to sign a certification, the operator will have sufficient time to block the cablecast of uncertified programming. A notice period of three days is necessary to allow operators a reasonable time to block a specific program in geographically dispersed systems.

Respectfully submitted,

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[4] Cf. paragraph 12 of the Notice, where the Commission proposes advanced written notification from leased access channel programmers that programming is "indecent." The rules should provide that operators may demand prior written certifications of compliance with Section 10 of the 1992 Act.